

Number: **201451015**
Release Date: 12/19/2014
Index Number: 382.07-05

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:CORP:BO1
PLR-112673-14

Date:
September 17, 2014

In Re:

LEGEND:

Taxpayer =

Foreign Parent =

State X =

Country Y =

Date =**b** =
$$A =$$

B =

Year c =Year d =Year e =Year f =

Year g =

Year h =

Year i =

Year j =

Year k =

M =

N =

O =

P =

Q =

R =

S =

T =

U =

V =

W =

Consulting Firm =

Stock Exchange =

Dear :

This letter responds to a letter from Taxpayer dated March 19, 2014, requesting a ruling under Section 382 of the Internal Revenue Code. Taxpayer furnished additional information in submissions dated July 22, July 28, August 18, and September 17, 2014. The information submitted is summarized below.

Summary of Facts

Taxpayer is a State X corporation whose stock is wholly owned by Foreign Parent, a Country Y corporation. Foreign Parent has one class of stock, which is publicly traded on a United States stock exchange. As of Date a, approximately b percent (a majority) of Foreign Parent stock was owned by one or more public groups (as defined in Treas. Reg. § 1.382-2T(f)(13)); the remaining stock was held by shareholders A and B. Foreign Parent is a “first-tier entity” of Taxpayer under Treas. Reg. § 1.382-2T(f)(9), and owner shifts involving 5-percent shareholders (including public groups) of Foreign Parent are attributed to Taxpayer. See generally § 1.382-2T(g).

Since Year c, Foreign Parent and its predecessor parent corporation has repurchased its stock from its shareholders in all of its years except for one year. Most of that stock has been repurchased on the open market from members of its public group or groups. In Year i, Foreign Parent purchased approximately V percent of its stock from shareholder A, and in Year k, Foreign Parent repurchased approximately W percent of its stock from shareholder B.

Foreign Parent repurchased the following percentages of its stock in its fiscal years ending in the years indicated below: Year c, M percent, year d, N percent, year e, O percent, Year f, P percent, Year g, Q percent, and Year h, R percent. Foreign Parent’s repurchases increased markedly in its fiscal year i, to S percent, but then dropped in year j (T percent, and Year k (U percent). During Year i, Foreign Parent received a report from Consulting Firm that recommended that its payments to its shareholders should be primarily distributions on its stock and a lesser proportion by stock buybacks, although it stated that the company could make additional “opportunistic” stock buybacks. However, Foreign Parent in each of Years i, j, and k made significantly more payments to shareholders in the form of stock buybacks than distributions.

Foreign Parent’s repurchases were authorized by resolutions by its Board of Directors that specify how much stock may be repurchased (either by a dollar amount or an amount that will offset dilution from certain stock issuances). The resolutions do not require Foreign Parent to repurchase all of the stock authorized, and grant authority to the Chief Executive Officer or Chief Financial Officer to decide how much stock to repurchase at any one time, and the prices to be paid.

Foreign Parent is subject to regulation under the Securities and Exchange Commission and Country Y securities regulators, both of which impose limitations on the transferability of Foreign Parent shares. In relevant part, these restrictions materially limit Foreign Parent’s ability to repurchase shares on the stock market. Due to these regulatory restrictions, Foreign Parent’s management must repurchase

Foreign Parent stock through the following three methods: (a) open market share repurchases during the “Open Trading Window”, (b) open market share repurchases pursuant to agreements entered into during an Open Trading Window but completed during the period after that Open Trading Window but before the beginning of the next Open Trading Window (the “Closed Trading Period”), and (c) share repurchases through private transactions.

According to Foreign Parent’s Securities Trading Policy, the Open Trading Window begins with the third trading day on Stock Exchange following the date on which Foreign Parent makes a public news release of its earnings for the prior fiscal quarter. That window closes on the last day of the second calendar month of the current fiscal quarter. Generally the Open Trading Window is approximately one month. During the Open Trading Window, the amount of shares that Foreign Parent may repurchase on a given day may be limited to an amount based on the volume-weighted average price (“VWAP”) for the last four weeks of trading prior to the repurchase. VWAP measures the average price of a stock traded over a certain trading period. Also, Foreign Parent’s stock repurchases during the Open Trading Window are subject to Rule 10b-18 of the Securities Exchange Act of 1934, which provides a “safe harbor” guideline for repurchasing shares on the stock market provided certain requirements regarding stock trading are satisfied.

If Foreign Parent is interested in repurchasing shares during the Closed Trading Period, it is subject to Rule 10b5-1 of the Securities Exchange Act of 1934. Generally, if all the terms of Rule 10b5-1 are satisfied in a plan, Foreign Parent enters into an agreement during the Open Trading Window to repurchase a predetermined number of shares at a specific stock price or at market price which can be executed during the Closed Trading Period. The maximum amount of shares that can be repurchased on any given day is also subject to a daily limit based on VWAP for the last four weeks.

Separately, Foreign Parent may repurchase shares by entering into a share purchase agreement directly with one or more of its major shareholders (shareholders that own 5 percent or more of the stock of Foreign Parent) to purchase its shares at a specific redemption price in a private transaction. This method was used in the repurchases in Year j from shareholder A and in year k from shareholder B.

Foreign Parent executes a majority of its stock repurchases during the Open Trading Window. The amount of stock repurchased varies daily and varies month to month depending on market conditions, Foreign Parent stock price, capital requirements, and available cash. After considering these factors, Foreign Parent’s management determines the share repurchase amount and places a repurchase order with a broker.

Representation

Taxpayer has provided the following representation:

During the relevant period, dating back to Year c, Taxpayer did not experience an ownership change, as defined under section 382.

Rulings

Based solely on the information submitted and the representation set forth above, we rule as follows:

- (1) Foreign Parent's repurchases of its stock completed during a given Open Trading Window ("Completed Repurchases") and repurchases of its stock made pursuant to an agreement complying with Rule 10b5-1 entered into during the same Open Trading Window referred to above but completed after that Open Trading Window but before the beginning of the next Open Trading Window ("Contracted Repurchases") will be aggregated and together will be considered to occur "at approximately the same time pursuant to the same plan or arrangement" for purposes of § 1.382-3(j)(14)(v)(A), and will therefore be considered a single redemption for purposes of determining whether that single redemption exceeds the small redemption limitation under § 1.382-3(j)(14)(iii)(A).
- (2) Completed Repurchases and Contracted Repurchases by Foreign Parent of its stock that are attributed to different Open Trading Windows will not be considered to occur "at approximately the same time pursuant to the same plan or arrangement" for purposes of § 1.382-3(j)(14)(v)(A).

Caveats

We express no opinion on whether any of Foreign Parent's stock repurchases will be treated as a single redemption on the ground that "a principal purpose of redeeming the stock in separate redemptions rather than a single redemption is to minimize or avoid an owner shift" under Treas. Reg. § 1.382-3(j)(14)(v)(B). We also express no opinion on the tax treatment of the transactions described above under any other provisions of the Code or Treasury Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with a power of attorney on file with this office, copies of this letter are being sent to two of your authorized representatives.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel
(Corporate)